

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL REVISION APPLICATION No. 30 of 2004
WITH
CRIMINAL APPEAL NO. 26 OF 2003****For Approval and Signature:****HON'BLE MR.JUSTICE A.R.DAVE****HON'BLE MR. JUSTICE MD SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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HARIRAJSINH BHISINH ZHALA - Applicant(s)

Versus**STATE OF GUJARAT & 2 - Respondent(s)****Appearance :**

MR HD CHUDASAMA for Petitioner No(s).: 1.
MR. SUDHANSHU PATEL, A.P.P. for Respondent No(s).: 1.
None for Respondent No(s).: 2,3.

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CORAM : HON'BLE MR.JUSTICE A.R.DAVE**and****HON'BLE MR. JUSTICE MD SHAH****Date : 22/07/2005****ORAL JUDGMENT****(Per : HON'BLE MR.JUSTICE A.R.DAVE)**

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1. In this appeal, the State of Gujarat has

challenged the validity of the judgment and order passed by the Additional Sessions Judge, Surendranagar in Sessions Case No. 93 of 2002. By virtue of the impugned judgment, the accused have been acquitted of the charges levelled against them under the provisions of Sections 302 and 201 read with Section 114 of the Indian Penal Code and U/S. 135 of the Bombay Police Act. A Criminal Revision Application has also been filed by the complainant.

2. We have heard ld. Assistant Public Prosecutor Mr. Sudhanshu Patel appearing for the State and ld. Advocate Mr. Harshad Chudasama for the complainant, who argued vehemently. We have also perused the copies of the evidence which had been adduced before the Trial Court.

3. The case of the prosecution was that Mr. Yuvrajsinh, an Advocate by profession, had lent some amount to the accused and as the accused

were not returning the said amount, Mr. Yuvrajsinh was using abusive language while demanding the amount. He was becoming so harsh that he had to be requested not to use abusive and harsh language while making an effort to recover the amount lent to the accused.

4. Dead body of Mr. Yuvrajsinh was found from a Well on 7th August, 2002 around 3.30 p.m. A complaint was filed against the accused on 8th August, 2002.

5. According to the case of the prosecution, though , there was no eye witness, two witnesses had seen the accused and the deceased going together at the temple of 'Shaktimata'. Witness Chhatrasinh, Prosecution Witness No.16, is the main witness, who was examined by the prosecution, though, Chhatrasinh (Prosecution Witness No.16) was not an eye witness, he was the person who claimed that the accused and the

deceased were going together towards the temple of 'Shaktimata' on 3rd August, 2002. It has been deposed by him that he had gone to his field which was on the way to Shaktimata's temple and he had seen all the three, the accused and the deceased, together. Thereafter, he has deposed that he had seen the accused in the field of another person, but, he had not seen the deceased. Thus, on the basis of last seen together, the prosecution had made an effort to establish that the accused had committed murder of the deceased. Some blood was found at the temple of 'Shaktimata' and the said blood matched the blood of the deceased. It is pertinent to note that the said witness was not believed by the Trial Court for the reason that he did not state the said fact to any one before giving evidence in the Court. He has admitted that he and the deceased were neighbours and belonged to the same caste. The deceased was missing from 3rd August, 2002 and, therefore, one can presume that

search of the deceased must be going on in the village, but, the said witness did not state to anyone that he had seen the deceased with the accused on 3rd August, 2002. The conduct of the witness was not found to be normal before the Trial Court and, therefore, he was not believed. It is also pertinent to note that there was a very thick hedge of Cactus surrounding his field and, eventhough, according to the said witness, it was difficult to see through the said hedge of Cactus, he claimed to have seen the accused and the deceased through the Cactus hedge.

6. The Trial Court has expressed some doubt whether, in fact, money was lent to the accused, because, after death of the deceased, no document evidencing payment by the deceased to the accused could be found from his residence. Even, if, we do not give much importance to the said fact or importance to identification of the body of the deceased, it is not possible to establish the

guilt of the accused only on the basis of deposition of witness Chhatrasinh (Prosecution Witness No.16).

7. We do not find any substance in the appeal and we do not find any reason to have a different view than the one, which has been taken by the Trial Court.

8. Upon appreciation of the evidence, we are of the view that on the basis of available evidence, the accused cannot be convicted. Therefore, the appeal is dismissed and the Criminal Revision Application is also disposed of with no orders thereon.

[A.R. DAVE, J.]

[M.D. SHAH, J.]

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